

Members

Sen. Morris Mills, Co-Chair
Sen. Beverly Gard
Sen. Frank Mrvan
Sen. Glenn Howard
Sen. Timothy Lanane
Sen. James Lewis
Sen. David Long
Sen. James Merritt
Sen. Becky Skillman
Sen. Thomas Weatherwax
Sen. Gregory Server
Rep. James Bottorff, Co-Chair
Rep. Robert Behning
Rep. Richard Bodiker
Rep. James Atterholt
Rep. David Crooks
Rep. Susan Crosby
Rep. David Frizzell
Rep. Brian Hasler
Rep. Jack Lutz
Rep. Edmund Mahern
Rep. Bruce Munson
Rep. Paul Robertson
Rep. Scott Pelath
Rep. David Yount

LSA Staff:

Brian Tabor, Fiscal Analyst for the Committee
Sarah Burkman, Attorney for the Committee

Authority: IC 8-1-2.6-4



REGULATORY FLEXIBILITY COMMITTEE

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 232-9588 Fax: (317) 232-2554

MEETING MINUTES¹

Meeting Date: September 27, 1999
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., House Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Morris Mills, Co-Chairperson; Sen. Beverly Gard; Sen. Frank Mrvan; Sen. Glenn Howard; Sen. Timothy Lanane; Sen. James Lewis; Sen. Becky Skillman; Rep. James Bottorff, Co-Chairperson; Rep. Robert Behning; Rep. Richard Bodiker; Rep. James Atterholtz; Rep. David Crooks; Rep. Susan Crosby; Rep. David Frizzell; Rep. Brian Hasler; Rep. Jack Lutz; Rep. Edmund Mahern; Rep. Scott Pelath.

Members Absent: Sen. David Long; Sen. James Merritt; Sen. Gregory Server; Rep. Bruce Munson; Rep. Paul Robertson; Rep. David Yount; Sen. Thomas Weatherwax.

Representative James Bottorff, Co-Chair of the Committee, convened the second meeting of the Regulatory Flexibility Committee at 10:20 a.m. and recognized William McCarty, Chairman of the Indiana Utility Regulatory Commission (IURC).

Presentation by William McCarty, Chairman, IURC

Single Rate Water Pricing

Chairman McCarty began the discussion by explaining that single rate pricing requires rates for water service to be standard throughout specified delivery areas. Chairman McCarty stated that

¹Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

the IURC has already issued orders regarding single rate pricing. He further commented that in some locations, single-rate pricing may result in decreased rates for residents in central areas and increased rates for those living on the periphery. Mr. McCarty indicated that the opposite effect may also occur in some cases.

Turning to the benefits of single rate pricing, Chairman McCarty cited the promotion of an even distribution capital investment and infrastructure. The Chairman also stated that other positive effects would be softening the shocks of rate hikes and lengthening the time between such increases (the current period between increases is roughly 18 months to two years). Co-Chairman Mills then asked if the single rate system addresses the true costs of service and Senator Lanane also asked if Chairman McCarty was against subsidization. The Chairman responded that some rates may be slightly higher than the true cost of service in some areas to cover the expenses of providing emergency services in remote areas.

Co-Chairman Bottorff asked how the needs for infrastructure investment are determined. Chairman McCarty replied that utility companies submit requests for expansion as part of an initial proposal. The Office of the Utility Consumer Counselor then reviews this proposal to judge if a rate increase is justified. (For an outline of the Chairman's presentation on this topic, see Exhibit A)

Enforcement Powers

Chairman McCarty began his presentation of enforcement powers by noting that the IURC does not have the authority to fine, yet several other state agencies do have this power. Chairman McCarty stated that as Indiana moves toward a more market-driven system, the Commission may assume the role of a referee as opposed to a regulator. Chairman McCarty emphasized that fines would not be used as a tool for revenue generation, but would rather be a deterrent, as utilities would seek to avoid negative publicity associated even with small fines.

Co-Chairman Bottorff addressed the possibility that fines could be potentially abused and used as a punishment tool. Chairman McCarty responded that the maximum fine could be set low and it is not important where the revenue is directed. Representative Lutz asked Chairman McCarty to explain the IURC's current enforcement powers. Chairman McCarty stated that the Commission has the ability to revoke a utility's Certificate of Territorial Authority (CTA) which would nullify an entity's license to operate in Indiana. He explained that this exemplifies the "all or nothing" decisions the IURC is presented with in enforcement situations. However, Chairman McCarty cautioned that it may not be practical to revoke the CTA of a local water or sewer utility when no alternative service is available.

Representative Crooks inquired about regulations requiring phone companies to meet certain standards of service and how these regulations are monitored. Chairman McCarty responded that phone companies must self-report concerning these service standards. An IURC staff member added that the FCC collects statistics concerning service levels, and Chairman McCarty stated that some of the self-reported data may not be entirely accurate.

Co-Chairman Bottorff then called for a recess at approximately 12:00 a.m. The Committee resumed its business shortly after 1:30 p.m. as Co-Chairman Bottorff again recognized William McCarty, Chairman of the Indiana Utility Regulatory Commission (IURC).

Annual Report on the Energy Industry

Chairman McCarty presented the IURC's annual report on the energy industry to the Regulatory Flexibility Committee, entitled Energy Report: Industry Facts and Updates to the Regulatory Flexibility Committee (for a copy of this report and an outline of Chairman McCarty's

presentation, see Exhibits B & C, respectively). Chairman McCarty first addressed the "Y2K" preparedness of Indiana utilities. Mr. McCarty noted that many of the larger utilities have shared information with smaller entities to help ensure Y2K compliance.

Chairman McCarty reported that the IURC required the investor-owned utilities (IOUs) to file reports with the Commission on the preparation for the summer power strain but that the situation was "tighter" in some areas than last year. Chairman McCarty predicted that problems could arise in the next 5 to 10 years as companies sell excess power in the wholesale market, reducing capacity margins. Although little new plant construction is planned, the Chairman commented that the IURC has been very responsive to the utilities' development of peaking units, approving the construction of three 300 to 550 megawatt units this year.

Chairman McCarty then stressed that some state entity should have authority over mergers and their impacts. He cited the 25 mergers (with seven pending) of gas and electric utilities since 1996 and commented that although these mergers are reviewed at the federal level, different objectives and standards are used. Chairman McCarty pointed out that the states of Ohio and Illinois have authority over mergers and negotiate to achieve agreements on employment targets and quality of service levels.

Co-Chairman Bottorff asked if utilities have advanced their computer systems in an effort to identify Y2K difficulties, and if not, what power the IURC has to force them to so do. Chairman McCarty stated that the utilities have been strongly encouraged by the Commission and that most utilities have observed few problems, if any. Co-Chairman Bottorff then asked what entity should have the authority to review and approve mergers. Chairman McCarty replied that he believed it should be the IURC, but that the decision will ultimately rest with the General Assembly. Co-Chairman Bottorff then asked if the IURC has been tracking the effects of deregulation nationwide. Mr. McCarty indicated that Ohio and Illinois have taken steps to restructure, but that it would be some time before Michigan and Kentucky follow suit.

Co-Chairman Mills remarked that industry officials have questioned that the capacity of Independent System Operators (ISOs), and asked what limitations or logistical problems exist. Chairman McCarty stated that some limits do indeed exist, as power is lost when transmitted over greater distances. However, he also stated that the loss was not sufficient enough to discourage participation in an ISO. Bob Glazier of the IURC noted that power is currently sold and transmitted to the East Coast. Co-Chairman Mills asked if there is currently enough line capacity to have such a system. Chairman McCarty responded that while there may be enough at this time, the future siting of transmission facilities remains a contentious issue.

Co-Chairman Bottorff asked about current developments in federal legislation and regulation. Chairman McCarty answered that not much has occurred in the federal arena that would affect Indiana's energy industry. Co-Chairman Mills asked if regional differences were the cause of any inaction at the federal level. Chairman McCarty confirmed that regional differences in available resources are indeed a cause, and that little federal action was expected until after 2001.

Annual Report on the Telecommunications Industry

Chairman McCarty began his presentation of the IURC's annual report on the telecommunications industry to the Regulatory Flexibility Committee, entitled Telephone Report to the Regulatory Flexibility Committee of the General Assembly (for a copy of this report and an outline of Chairman McCarty's presentation, see Exhibits D & E, respectively). Chairman McCarty first addressed the "Y2K" preparedness presentation on the telecommunications industry by stating that Indiana is not very advanced with respect to local exchange competition. He cited Indiana's economic and geographic characteristics as factors contributing to the slow

development of competition in this area. With respect to interconnection agreements, Chairman McCarty expressed his frustration that disputes were not being solved more quickly and called for a more expeditious process to help establish a level playing field.

Co-Chairman Mills inquired about issues related to competition in the cable industry. Maureen Flood of the IURC answered on behalf of Chairman McCarty, stating that some independent cable providers are building their own service delivery systems, but mostly for large customers only. Ms. Flood added that the Federal Communications Commission is currently investigating issues regarding coaxial cable service. Representative Crooks then asked if some current cable networks needed to be upgraded to carry digital signals, and Ms. Flood answered that this was correct.

Co-Chairman Bottorff asked about the need for enforcement powers in the telecommunication industry. Chairman McCarty responded that such powers were certainly needed, especially with respect to interconnection agreements, some of which continue to be in violation of federal law and past IURC orders. Chairman McCarty further stated that although the IURC needs to continue to improve its own efforts, additional enforcement powers would be a highly significant benefit. Chairman McCarty noted that both Ohio and Illinois have the ability to impose heavy penalties for failure to meet service standards.

Representative Lutz asked how competition will affect quality of service. Chairman McCarty responded that extensive local competition would help increase the level of service for consumers. However, he also warned that companies serving very large areas could shift their resources away from Indiana, causing a decline in service levels. Representative Crooks asked Chairman McCarty if he was requesting enforcement legislation, and the Chairman responded that he indeed was. Representative Atterholt then asked how merging companies interact with regulators in other states. Chairman McCarty answered that over half of the states in the US have merger approval authority, and that these states negotiate to achieve certain expectations of utilities (such as universal service and reliability).

Co-Chairman Mills asked Chairman McCarty if the IURC had investigated issues relating to the Indiana Telecommunications Association's complaints regarding the Intelnet Commission (see minutes for the Committee's meeting of September 14, 1999). Chairman McCarty responded that the IURC had not addressed this issue. Co-Chairman Mills then asked about private industry and the possibility that incentives to provide services to small communities could disappear. Chairman McCarty stated that if entities continue to invest in new technology, providing services to more remote communities should no longer be a concern.

Public Testimony

Co-Chairman Bottorff next recognized John Eckart, President of the Indiana-American Water Company, Inc. Mr. Eckart spoke about the single water pricing issue and said that his company was not opposed to this type of pricing system. Co-Chairman Mills asked what percentage of water customers are supplied by private firms and Mr. Eckart answered that about 35% of Indiana residents are served by private water companies.

Co-Chairman Bottorff asked how single rate pricing would affect areas near his home, including Jeffersonville and New Albany. Mr. Eckart replied that although rates have increased in these areas, the cost of certain infrastructure improvements would have caused a rate hike twice as great if not for single rate pricing. Co-Chairman Bottorff also asked if the Indiana American Water Company would have made the same improvements without single rate pricing. Mr. Eckart responded that the expansion was required by outdated facilities and would have occurred regardless of pricing systems.

Adjournment

Co-Chairman Bottorff thanked Chairman McCarty and all of those present. He then stated that no legislation would be proposed by the Committee and adjourned the meeting at approximately 2:50 p.m.